

AMENDMENTS TO THE DRAWINGS

The attached sheets of drawings includes changes to Figs. 1-5. These sheets replace the original sheets including Figs. 1-5. Figs. 1-5 have been amended to conform more clearly with its corresponding detailed description.

Attachments: Replacement Sheets

Annotated Sheets Showing Changes

REMARKS

Applicants acknowledge receipt of the Examiner's Office Action dated March 16, 2006. The Office Action objected to the drawings. Additionally, the Office Action rejected all claims. Specifically, claims 8-25 were rejected under 35 U.S.C. § 101, and claims 1-25 were rejected under 35 U.S.C. § 102(e) as being anticipated by Application Publication No. US2003/0014432 filed by Teloh et al. ("Teloh"). In light of the foregoing amendments and following remarks, Applicants respectfully request the Examiner's reconsideration and reexamination of all pending claims.

The Drawings Objections

The Office Action objected to the drawings because they failed to show necessary textural label of features or symbols as described in the specification. Applicants have amended the drawings to include textual labels of features as described in the specification.

35 U.S.C. § 101 Rejections

The Office Action rejected claims 8-14 as being directed to an apparatus comprising means for performing some functions. The Office Action asserts, however, each and every one of the means could be software, as described in the specification, and as such, the claimed apparatus is therefore software, per se, and is nonstatutory. Applicants have amended claims 8, 10, and 12-14 while canceling claims 9 and 11. The amended claims no longer recite "means for" language and are no longer subject to 35 U.S.C. § 112, sixth paragraph interpretation.

The Office Action rejected claims 15-21 as being directed to a machine readable medium that might include intangible embodiments according to the specification. The specification has been amended to remove intangible embodiments as types of machine-readable medium.

Applicants reserve the right to claims embodiments defined by the removed language in a continuation application

35 U.S.C. § 102 Rejections

Originally filed claim 4 recited periodically replicating data to said third node. The Office Action asserts in paragraph 18 of Teloh teaches periodic replication of data to a third node. Applicants have reviewed paragraph 18 and can find no teaching or fair suggestion of periodic replication. Rather, paragraph 18 describes synchronous replication to a first remote location and asynchronous replication to a second remote location. Applicants believe the Examiner fully understands the differences between synchronous and asynchronous replication on the one hand and periodic replication on the other. Given that paragraph 18 of Teloh does not describe periodic replication to a third node, Applicants assert that originally filed claim 4 is patentably distinguishable over paragraph 18 of Teloh. Applicants have amended claim 1 to include the limitations of claim 4. Because claim 4 has been shown to be patentably distinguishable over paragraph 18 of Teloh, it follows that independent claim 1, as amended, is likewise patentably distinguishable.

Originally filed claim 3 depends from originally filed claim 2. Originally filed claim 3, when considering the limitations of originally filed claim 2, recites asynchronous replication to the second node and asynchronous replication to the third node. The Office Action asserts that paragraph 18 and paragraph 48 of Teloh in combination teach asynchronous replication to a second node and asynchronous replication to a third node. Applicants have reviewed paragraphs 18 and 48. Paragraph 18 teaches synchronous replication to a first remote location and asynchronous replication to a second remote location. Paragraph 48 teaches asynchronous replication to a single remote site 14 (see Fig. 1). Neither paragraph 18 or 48 of Teloh separately


or in combination teach original claim 3's requirement of asynchronous replication to a second node and asynchronous replication to a third node. Applicants have amended claim 3 to incorporate the limitations of original claim 1. Insofar as claim 3 as amended maintains the limitations of asynchronous replication to a second node and asynchronous replication to a third node, it follows that amended claim 3 is patentably distinguishable over paragraphs 18 and 48 of Teloh.

The remaining independent claims recite an apparatus for machine readable mediums for performing the method as set forth in independent claims 1 or 3. Insofar as independent claims 1 and 3 have been shown to be patentably distinguishable over the cited sections of Teloh, it follows that the remaining independent claims are likewise patentably distinguishable.

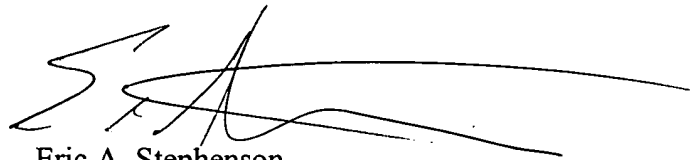
CONCLUSION

In view of the amendments and remarks set forth herein, the application is believed to be in condition for allowance and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is invited to telephone the undersigned at 512-439-5093.

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P. O. Box 1450, Alexandria, Virginia, 22313-1450, on August 16, 2006.


Attorney for Applicant(s) 8/16/06
Date of Signature

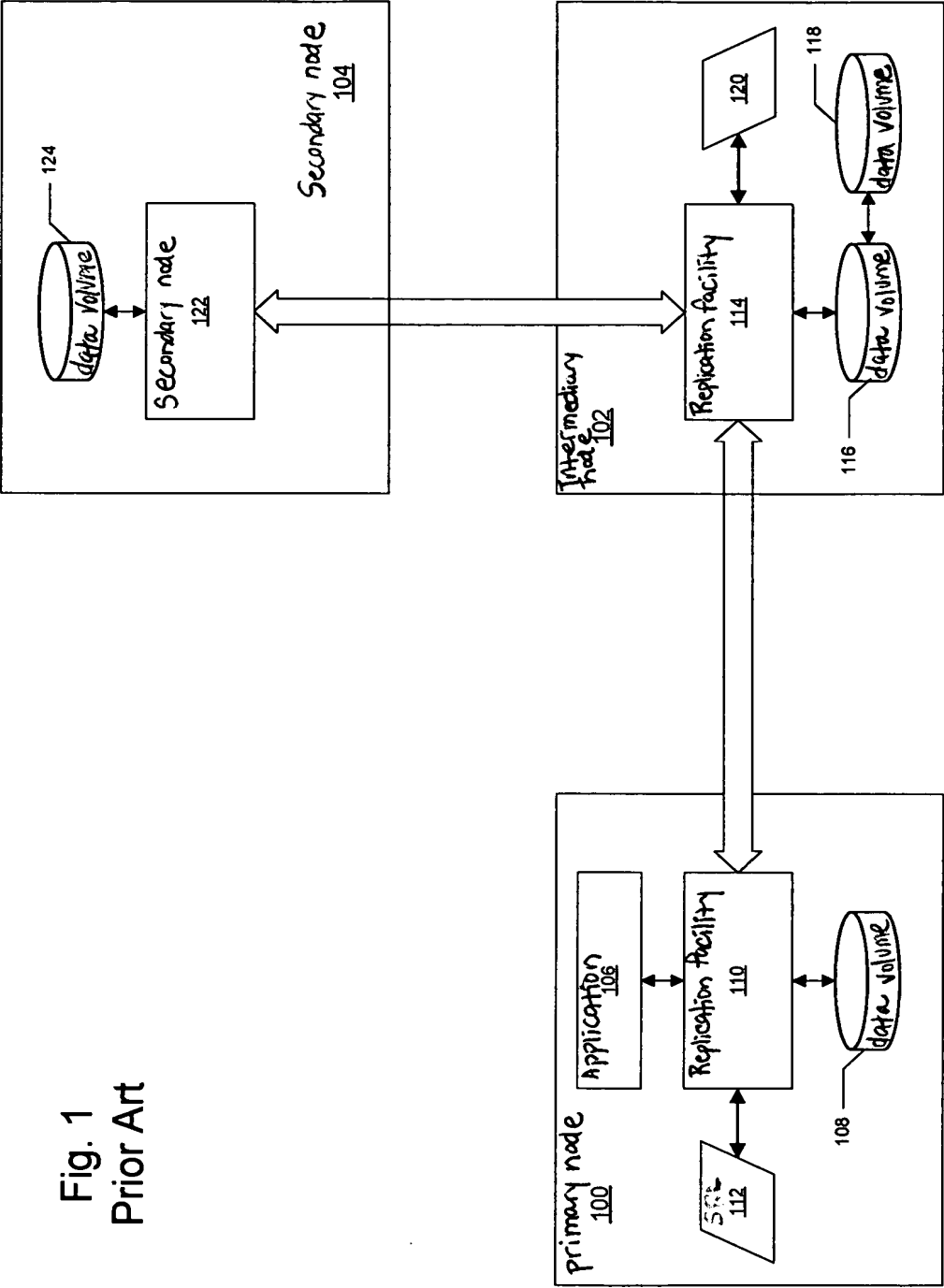
Respectfully submitted,



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Amendment dated: August 16, 2006
ANNOTATED SHEET SHOWING CHANGES



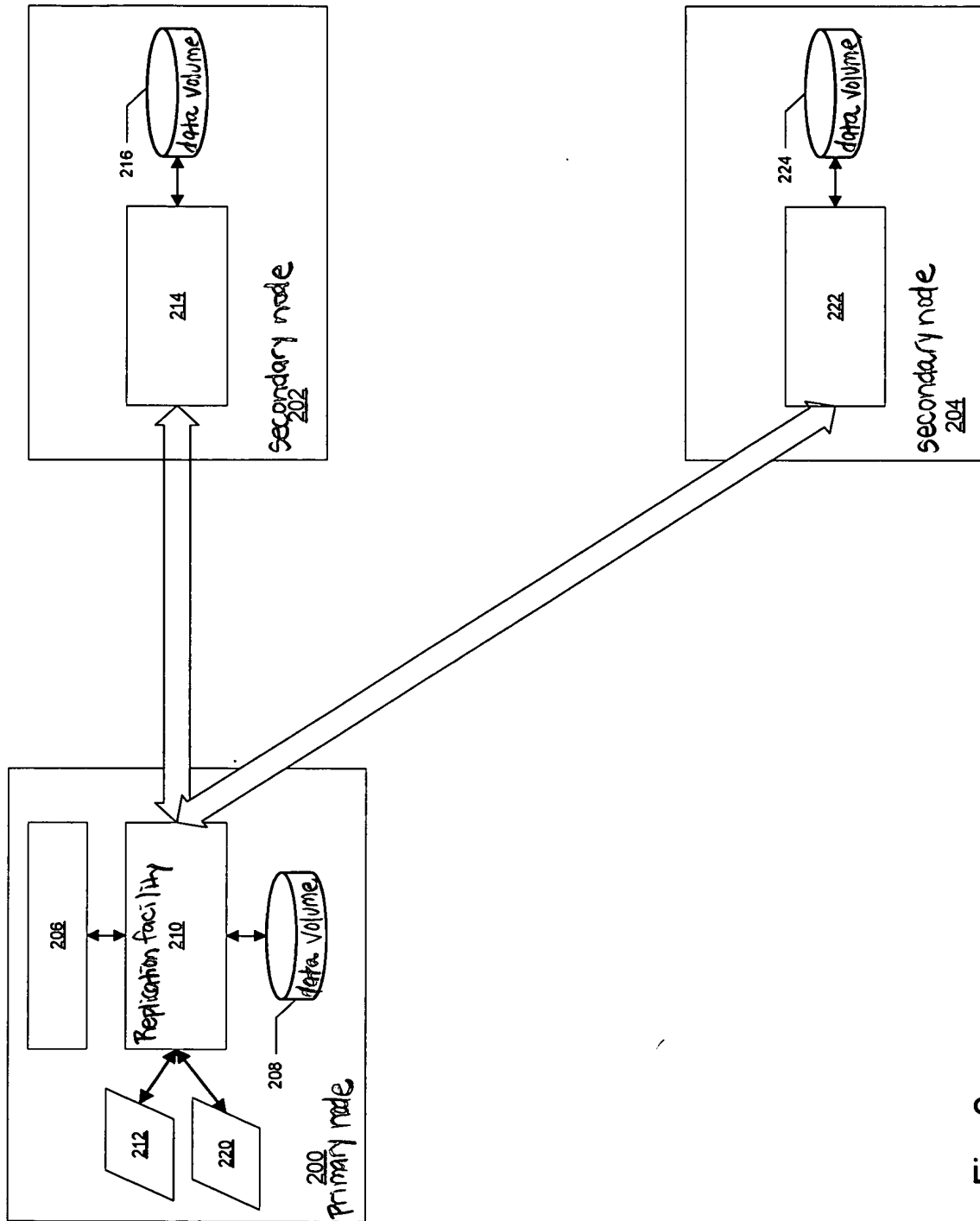


Fig. 2
 Prior Art

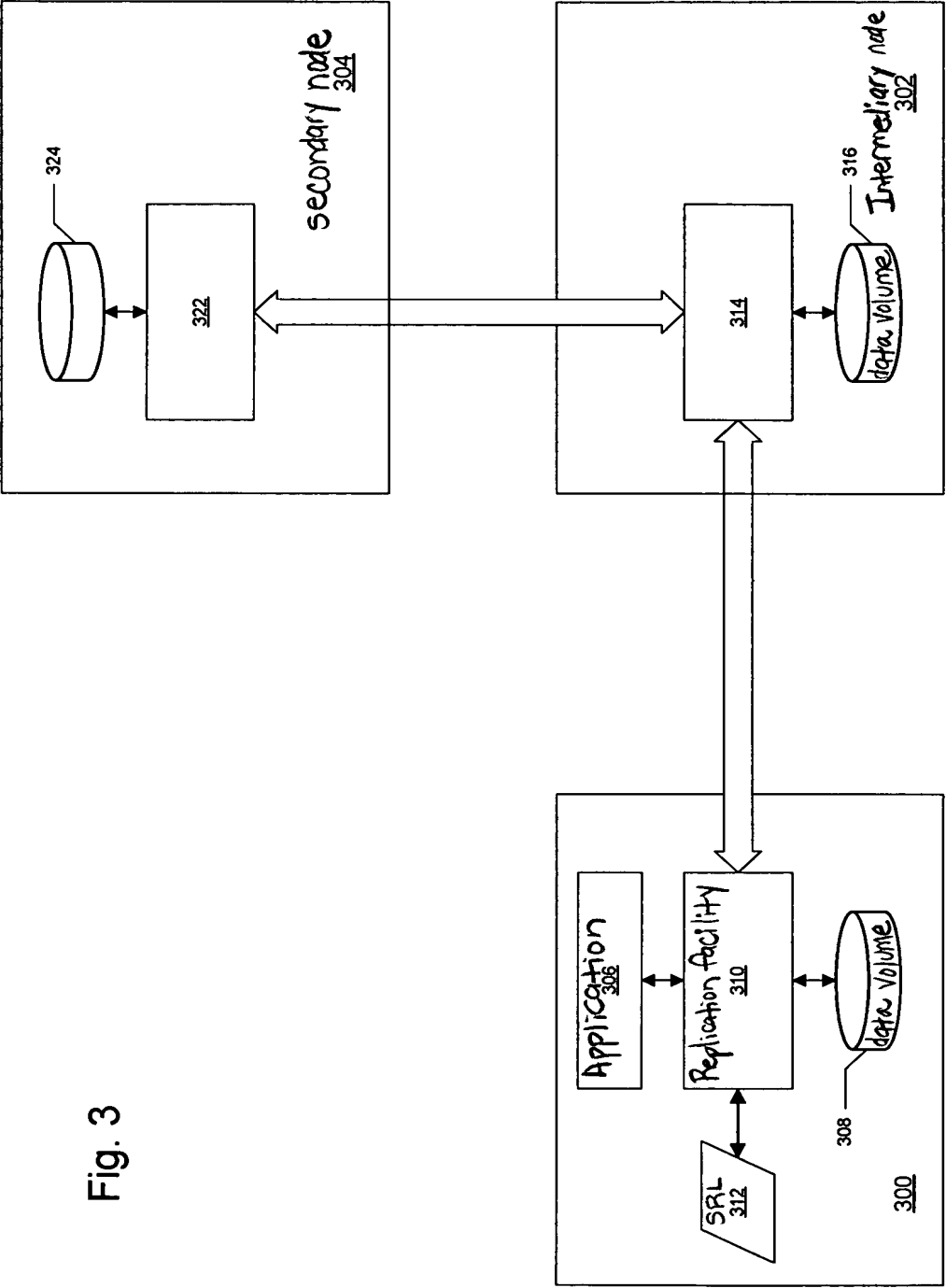
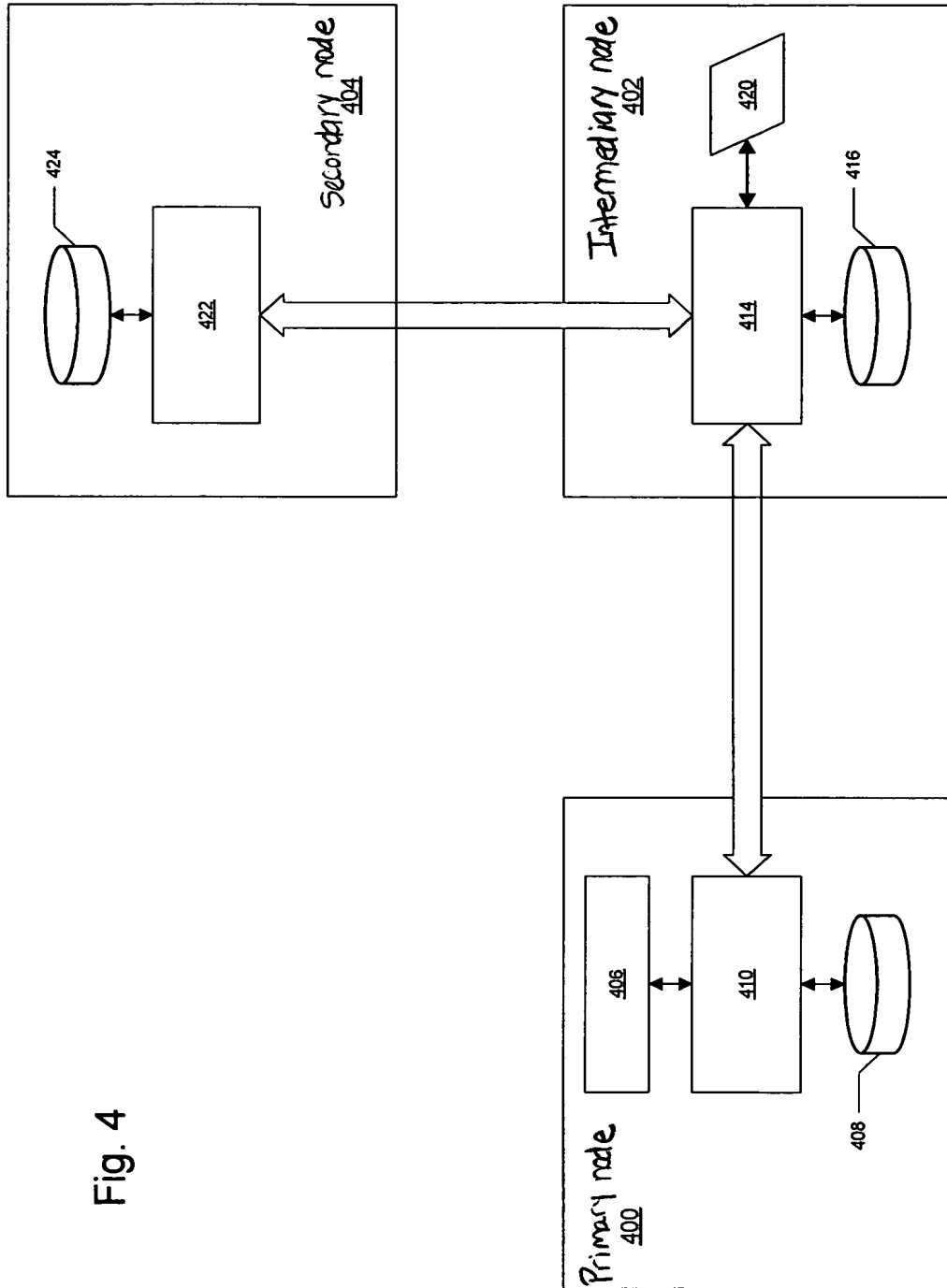


Fig. 3

Fig. 4



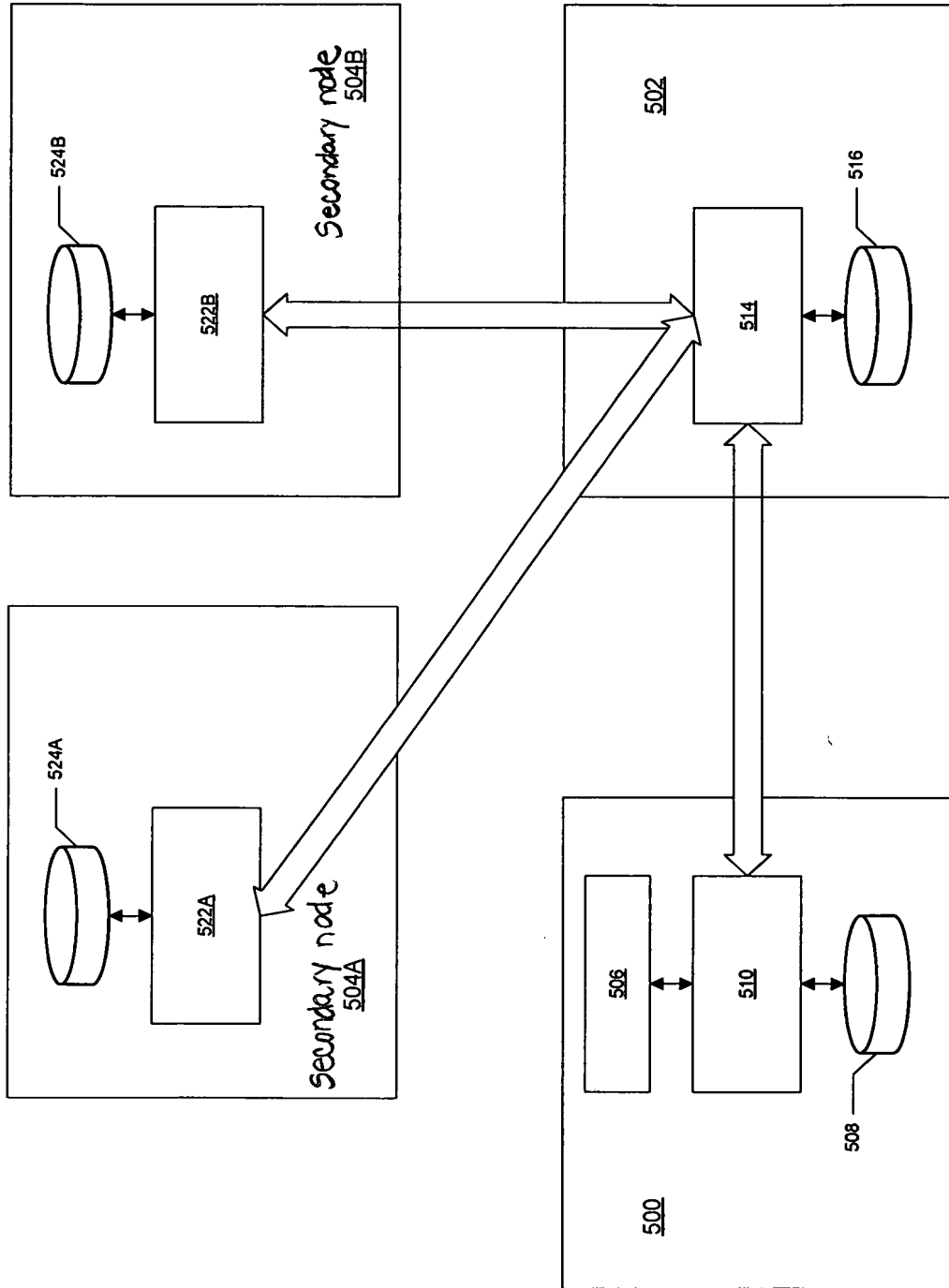


Fig. 5